

**BOARD OF APPEALS CASE NO. 4879**

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**BEFORE THE**

**APPLICANT: D. Bartholemew Kreiner, DDS**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance for a home  
occupation to exceed 25% of the gross  
floor area and Special Exception to allow  
a free-standing sign; 511 S. Fountain  
Green Road, Bel Air  
HEARING DATE: February 17, 1999**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 12/9/98 & 12/16/98**

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**Record: 12/11/98 & 12/18/98**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicant is D. Bartholemew Kreiner, D.D.S. The Applicant is requesting a variance to Section 267-26(D)(5)(a) of the Harford County Code, to allow a professional office to exceed more than 25% of the gross floor area for a home occupation, and a Special Exception to Section 219-13(A)(1)(b) to allow a free-standing sign in the R1 District.

The subject parcel is located at 511 South Fountain Green Road in the Third Election District. The parcel is identified as Parcel No. 65, in Grid 1-F, on Tax Map 49. The parcel contains .5943 acres, all of which is zoned R1.

Dr. D. Bartholemew Kreiner appeared and testified that his property is surrounded on two sides by property owned by the Board of Education of Harford County and that the property has been improved and developed as the Fountain Green Elementary School. Dr. Kreiner said that his lot and a parcel owned by the Bedsaul family are the only two residential lots in the area that are surrounded by the Board of Education property, and MD Route 543. Dr. Kreiner said that he maintains an office in Bel Air and that he would like to move his dental office to his home. He said that he would be unable to provide a modern, efficient office within the 747 square feet allowed by the Code. The Applicant explained that his dwelling contains 2,990 square feet and that the proposed dental office, which will be located within an existing garage and a proposed addition will be approximately 979 square feet.

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Dr. Kreiner introduced Applicant's Exhibit No. 3, which shows the proposed location for the office as well as off-street parking. He went on to testify that the addition will be constructed of materials compatible with the existing exterior design of the home and that he will maintain the residential appearance of the dwelling.

Applicant's Exhibit No. 5 was introduced which shows the arrangement of the proposed office space and Dr. Kreiner explained that modern disease control procedures required by State and Federal law require disinfecting the operatories which will result in at least one of the operatories being unavailable at most times. He went on to testify that the dental hygienist may be using one operatory and the dentist may have two patients who are being treated by the dentist and the dental assistant. Dr. Kreiner explained that it would not be feasible to construct an office that was not more than 747 square feet and that he would suffer practical difficulty if the variance is denied because he would be limited to 747 square feet of office space.

Dr. Kreiner said that he and his wife own and reside in the dwelling and will continue to reside in the dwelling and that he will be the only dentist employed in the practice. He said Mrs. Kreiner is a dental hygienist and is employed in his dental practice. Dr. Kreiner also said he employs two non-family/non-residents of the house; one as a receptionist and the other as a dental assistant. Dr. Kreiner testified that, based on his review of the October 28, 1998 letter from the Department of Planning and Zoning, the wording of paragraph D of the home occupation/professional office certification form and his knowledge of the Zoning Code, he believes that he could employ three people, including his wife, in his dental practice. He said it was only upon receipt of the Staff Report of the Department of Planning and Zoning that he was first advised that it was the Department's interpretation that only three people may be involved in the home occupation, including Dr. Kreiner himself.

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Dr. Kreiner said that his interpretation of Section 267-26(D)(5)(d) is that “the total of all employees, inclusive of family members, shall not exceed three”. Dr. Kreiner said that he is not an employee, he is the employer and that the only employees are the dental assistant and receptionist because Mrs. Kreiner is a member of the immediate family who resides in the dwelling. Dr. Kreiner said that it is his position that he may employ three individuals without obtaining a variance or modification. Dr. Kreiner said in the event that he must obtain a variance to Section 267-26(D)(5)(d), that it would not be feasible to operate his dental practice with only two employees.

Dr. Kreiner testified that he currently has a septic system but that all medical waste and chemicals will be diverted from the septic system and will be removed from the premises by a certified medical waste hauler.

Dr. Kreiner also requested a Special Exception for a free-standing sign. The Applicant said the sign is extremely important to his practice as it indicates the location of his office. He said the sign would be installed in compliance with the applicable requirements of the Sign Code. Dr. Kreiner said that he has spoken to Mr. and Mrs. Bedsaul, his neighbors, prior to filing the application, that the Bedsauls do not object to approval of the variance and special exception, and that they did not appear at the hearing.

Dr. Kreiner said that he had reviewed the Staff Report and he agrees with Condition Nos. 1 and 3. With respect to Condition 2, “Planting additional screening along the left side”, Dr. Kreiner explained that he, the Bedsauls and other neighbors share a garden plot in Dr. Kreiner’s back yard. Dr. Kreiner expressed a desire to keep the garden plot and, in any event, to let the Bedsauls decide whether or not they want to have landscaping or a fence or nothing at all.

### **CONCLUSION:**

The Applicant is requesting a variance to Section 267-26(D)(5)(a) of the Harford County Code, to allow a professional office to exceed more than 25% of the gross floor area for a home occupation and a Special Exception to Section 219-13(A)(1)(b) to allow a free-standing sign in an R1 District.

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**Section 267-26(D)(5)(a) provides:**

**“The home occupation must be clearly incidental and subordinate to the residential use and shall not exceed in area twenty-five percent (25%) of the gross floor space of the principal building.”**

**Section 219-13(A)(1)(b) provides:**

**“Free-standing sign may be permitted as a special exception, subject to the approval of the Board, provided that they are located not less than ten (10) feet from the road right-of-way, do not exceed six (6) feet in height, and do not have a sign area exceeding four (4) square feet.”**

**The Applicant has also asked for an interpretation of Section 267-26(D)(5)(d), which provides:**

**“Not more than one (1) person, or two (2) persons for medical offices, other than members of the immediate family residing in the dwelling unit, may be employed in the home occupation. The total of all employees, inclusive of family members, shall not exceed three (3). No home occupation shall be open to the public between 9:00 p.m. and 8:00 a.m.”**

**The uncontradicted testimony of the Applicant was that the subject property is unique due to the surrounding school property and school parking lot and the fact that the parcel front on MD Route 543, which is a heavily traveled state highway. The evidence clearly demonstrates that the literal enforcement of the Code to limit the size of the dental office in this case would result in practical difficulty to Dr. Kreiner. The granting of the variance to allow a larger office would not be detrimental to the neighbors or the public health, safety or welfare.**

**Therefore, it is the recommendation of the Hearing Examiner that the request to increase the allowable square footage of the home occupation from 747 square feet to 979 square feet be approved.**

**The Applicant has also requested a special exception for a free-standing sign. The Applicant testified that the sign will comply with all requirements set forth in the Code. No evidence was introduced to show that the sign would have an adverse impact at that particular location. Therefore, it is the recommendation of the Hearing Examiner that the special exception for the requested sign be approved.**

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The final issue to be determined by the Hearing Examiner is the number of persons allowed to work in the home occupation. The testimony of Dr. Kreiner is that his wife is a licensed dental hygienist who works on the premises, that he would also like to have a receptionist and a dental assistant.

The Applicant argues that he is not an employee but the employer. However, Section 267-26(D)(5)(d) provides....the total of all employees, inclusive of family members, shall not exceed three... Even though the Applicant argues that he is not an employee but the employer, he is still a family member and, therefore, it is the interpretation of the Hearing Examiner that the maximum number of employees, including family members is 3.

Section 267-26(D)(5) does allow the Board of Appeals to approve modifications to the home occupation or professional office criteria. Dr. Kreiner did testify that normal dental offices are comprised of the dentist, a hygienist, a dental assistant and a receptionist, and that limiting him to three individuals in the practice would cause practical difficulty. Dr. Kreiner testified that he will be the only dentist involved in the home occupation.

It is the finding of the Hearing Examiner that to limit the total number of employees to 3 would cause unnecessary hardship since it is customary that a dental practice generally consists of a dentist, receptionist, hygienist and dental assistant. Therefore, it is the recommendation of the Hearing Examiner that the Applicant be allowed to have 4 employees, including himself, in the home occupation.

The variance and special exception shall be subject to the following conditions:

1. The Applicant shall obtain all necessary permits and inspections.
2. The Applicant shall maintain the existing landscaping around the parking area and shall implement additional screening if a written request is made to the Department of Planning and Zoning by the Bedsaul family.
3. The proposed free-standing sign shall be installed pursuant to the standards of Section 219-13(A)(1)(b) of the Harford County Code.

**Date            APRIL 7, 1999**

**L. A. Hinderhofer  
Zoning Hearing Examiner**